

ORIGINAL

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20555  
DOCKET FILE COPY ORIGINAL

In the Matter of )  
)  
Advanced Television Systems and ) MM Docket No. 87-268  
Their Impact upon the Existing Television )  
Broadcast Service )  
)

RECEIVED  
JUN 13 1997  
Federal Communications Commission  
Office of Secretary

To: The Commission

**PETITION FOR RECONSIDERATION**

WLNY-TV, Inc., licensee of station WLNY(TV), Riverhead, New York ("WLNY"), and low power television stations W38BC, Stamford, Connecticut; W44AW, Morristown, New Jersey; and W57BC, Mineola, New York, by its attorney, hereby submits its Petition for Reconsideration with respect to the FCC's *Fifth and Sixth Reports and Orders* in the above-captioned proceeding.

**I. REQUEST FOR RELIEF.**

WLNY requests that the Commission modify its DTV allotment table to (1) reduce the substantial interference to WLNY's NTSC signal and (2) relocate WLNY to a DTV channel within the DTV spectrum "core."<sup>1</sup> Second, in recognition of the unique

---

<sup>1</sup> In fairness to WLNY and other similarly situated stations, the Commission should immediately release OET Bulletin No. 69, without which WLNY cannot evaluate whether an alternative DTV allotment satisfies the FCC's minimum distance separation requirements and other technical criteria. Should the FCC release this document during the pendency of this proceeding, WLNY asks that it be allowed to supplement this Petition so that it may make an  
(continued...)

No. of Copies rec'd 0411  
List A B C D E

technical, operational and marketing burdens WLNY will face when implementing its DTV operations, the FCC should modify its rules to give WLNY first priority with respect to any "core" DTV allotments identified by the station or the FCC as available for allotment. If no such channels exist, then WLNY should be given a right of first priority with respect to any NTSC channels recovered during the transition to digital. Given the costs inherent to "out of core" DTV operation (particularly where the "out of core" station is already suffering substantial interference to its NTSC signal), it would be entirely inequitable to require WLNY to suffer the additional burden of having to compete for scarce DTV allotments with stations already in the "core" or with LPTV or translator stations that have secondary status. When recovered NTSC channels become available for DTV allotment, the FCC should simply issue a public notice establishing an exclusive filing window for "out of core" stations. No recovered spectrum should be made available to stations already in the "core" or to LPTV or translator stations unless and until each "out of core" station has been awarded a "core" DTV channel that duplicates its existing DTV signal coverage.

Finally, WLNY requests that the Commission adopt an exception to its LPTV displacement rules to allow WLNY and other stations like it to recover their displaced LPTV channels once their full-service facilities are reassigned to "core" channels that remove any DTV-to-LPTV interference. This proposal will minimize the burden of

---

<sup>1</sup>

(...continued)

alternative DTV channel proposal on the basis of that information.

LPTV displacement on stations which effectively will interfere with themselves solely because the FCC has not yet awarded them a "core" DTV allotment.

## **II. REASONS FOR RELIEF.**

WLNY, also known by its brand name "NY55," is the only remaining commercial independent station in the New York ADI broadcasting a general entertainment/news/sports format.<sup>2</sup> As such, WLNY is a unique and substantial source of local television programming in the New York "tri-state" area. Over the past several years WLNY has expanded its local news programming significantly and acquired low power television stations in the market to enhance the quality and reach of its service. The FCC's DTV allotment table, however, puts WLNY's local service in jeopardy because it will cause substantial interference to WLNY's NTSC signal and thus materially diminish WLNY's off-air audience. Furthermore, by allotting the station a DTV channel outside of the DTV spectrum "core," the FCC has imposed additional operational and financial burdens on WLNY. As a result, absent a modification of the table and/or a revision of the FCC's DTV rules, it will be virtually impossible for WLNY to compete on equal footing with other stations in the New York ADI, particularly the more powerful VHF stations who already enjoy substantial competitive advantages in the market. Accordingly, WLNY has a direct and substantial interest in the outcome of this proceeding.

---

<sup>2</sup> The formerly independent VHF stations in the market (WNYW, WWOR and WPIX) have all affiliated with national networks (Fox, UPN and Warner Bros., respectively). The remaining commercial independent stations in the market are broadcasting foreign language, home shopping or other specialized formats.

WLNY currently operates on NTSC channel 55 at Riverhead, New York. By the Commission's own calculations, the additional interference caused by the FCC's allotment table will reduce WLNY's existing off-air audience by nearly 15%, or by approximately 483,000 people.<sup>3</sup> Of the approximately 1600 other full-service television stations listed in the DTV allotment table, only five suffer a higher percentage of audience loss from DTV-to-NTSC interference than WLNY.<sup>4</sup> Compounding the problem is the fact that WLNY also is one of the relatively small number of stations whose NTSC channel *and* DTV channel (55 and 57, respectively) are outside the FCC's DTV spectrum "core." This means that WLNY must commit substantial financial resources to launching its DTV operation without knowing its final DTV channel assignment until 2006 at the earliest, when the Commission proposes to recover all NTSC channels. By contrast, the New York City network affiliates and other market stations with whom WLNY must compete for audience and advertising dollars have the far more favorable option of staying on their "core" channel or returning to their NTSC channel if they so desire.<sup>5</sup>

The potential damage to WLNY's operations from the above-described scenario is considerable. As a practical matter, it will be extremely difficult for WLNY to recover

---

<sup>3</sup> See *Sixth Report and Order*, Appendix A, Table 1 (stating that the FCC's DTV allotments will cause additional interference that will affect 14.9% of the population within WLNY's NTSC Grade B contour).

<sup>4</sup> The other stations are WNDS, channel 50, Derry, New Hampshire (15.9%); WMBC, channel 63, Newton, New Jersey (19.0%); WSFJ, channel 51, Newark, Ohio (17.4%); WPTO, channel 14, Oxford, Ohio (32.5%); and WTVR, channel 6, Richmond, Virginia (16.0%).

<sup>5</sup> The lone exception is WCBS(TV), channel 2, whose DTV allotment is channel 56.

viewers lost by virtue of DTV interference to the station's off-air signal. Those viewers will turn either to stations that have already launched DTV operations or to stations whose NTSC signals do not suffer the same level of interference. This places WLNY at a decided disadvantage when competing for audience share and advertising dollars in the highly competitive New York ADI, particularly since the station does not enjoy the same marketwide cable carriage as its VHF competitors and thus has far less ability to compensate for audience losses attributable to off-air interference.<sup>6</sup>

WLNY also faces enormous technical, operational and marketing uncertainty by virtue of having an NTSC and a DTV allotment outside the DTV spectrum core. Under the FCC's current DTV rules, WLNY must file an application to construct its DTV facilities on channel 57 by November 1, 1999, and is required to complete construction by May 1, 2002. WLNY cannot continue DTV operation on channel 57 permanently, nor does it have the option of returning to its NTSC channel. Instead, it appears from the *Sixth Report and Order* that WLNY must wait until the FCC completes its recovery of NTSC channels in 2006 and then request a DTV channel within the DTV spectrum "core," a channel which may or may not be available depending on whether other stations

---

<sup>6</sup> The FCC is well aware that a large number of major cable operators in the New York ADI have targeted WLNY and other UHF stations in market modification petitions filed under Section 76.61 of the FCC's Rules. To date, the net result of those petitions has been that the New York City VHF stations enjoy ADI-wide cable carriage but WLNY and other UHF stations in the market do not. See, e.g., *Time Warner-Advance/Newhouse Partnership*, DA 96-830 (released May 31, 1996); *Cablevision Systems Corporation*, DA 96-826 (released May 31, 1996); *Comcast Cable of Monmouth County*, DA 96-824 (released May 31, 1996); *HomeLink Communications of Princeton, L.P. and ComVideo Systems, Inc.*, DA 97-1148 (released June 4, 1997).

make conflicting claims to the recovered spectrum. In effect, then, WLNY will be required to make duplicative investments in its DTV operations, one to initially launch on channel 57 and another to launch on an unknown DTV "core" channel at some indeterminate point in the future after the FCC recovers the necessary NTSC channels in 2006 and resolves any conflicting claims thereto. No other station in the New York ADI faces this predicament.<sup>7</sup>

Finally, because WLNY's current DTV allotment is co-channel with WLNY's existing low power television station at Mineola, New York, WLNY is in the awkward position of having to locate a new channel for that facility even though WLNY's current DTV allotment is only temporary. Hence, absent a modification of the Commission's rules, WLNY's investment in its low power facilities is at risk as well.

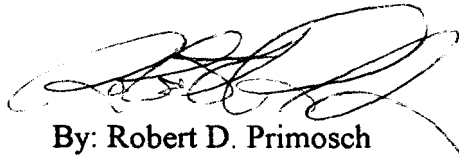
---

<sup>7</sup> Under the FCC's current DTV deployment timetable, the ABC, CBS, NBC and Fox stations in New York City must construct their DTV facilities by May 1, 1999. In all likelihood, these stations and others in the New York ADI will elect to conduct DTV operations on their existing NTSC channel which has substantial brand name recognition throughout the market. By contrast, WLNY will have no opportunity to take advantage of the brand name recognition it has developed with respect to channel 55, a.k.a. "NY55." Instead, WLNY must remarket itself on DTV channel 57 and then repeat the process on whatever "core" DTV channel is assigned to it in the future. The resulting marketplace confusion (both among viewers and advertisers) will be unique to WLNY and undermine the station's substantial investment in digital conversion.

WHEREFORE, for the reasons set forth above, WLNY-TV, Inc. requests that the FCC reconsider and modify its DTV allotment table and its associated DTV rules as requested in this Petition.

Respectfully submitted,

**WLNY-TV, INC.**



By: Robert D. Primosch

**WILKINSON, BARKER, KNAUER & QUINN**  
1735 New York Avenue, N.W.  
Washington, D.C. 20006  
Tel: 202/ 783-4141  
Fax: 202/783-5851

Its Attorney

June 13, 1997